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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 5 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Eligibility for the Specialized
Mobile Radio Services
and Radio Services in the
220-222 MHz Land Mobile Band
and Use of Radio Dispatch
Communications

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GN Docket No. 94-90

COMMENTS OF CENTURY TELEPHONE ENTERPRISES, INC.

CENTURY TELEPHONE ENTERPRISES,
INC.

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Dated: October 5, 1994

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COMMENTS OF CENTURY TELEPHONE ENTERPRISES, INC.

Century Telephone Enterprises, Inc. ("Century") hereby submits these comments in response to the Notice of Proposed Rule Making adopted by the Commission on August 2, 1994, in the above-captioned docket.¹

I. INTRODUCTION AND SUMMARY

The *Notice* in this proceeding represents the latest step in the Commission's ongoing effort to maximize competition in the mobile services marketplace and to create a level regulatory playing field for competing mobile service providers.² In the

¹ Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, FCC 94-202 (Aug. 11, 1994) (Notice of Proposed Rule Making) [hereinafter "*Notice*"]. The original date for the filing of opening comments in this proceeding was September 21, 1994. In an order adopted by the Chief of the Private Radio Bureau, this date was extended to October 5, 1994.

² See also Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, FCC 94-212 (Sept. 23, 1994) (Third Report and Order) (adopting changes to the technical, operational, and licensing rules (continued...))

Notice, the Commission proposes to amend the rules that govern eligibility in the Specialized Mobile Radio ("SMR") and commercial 220-222 MHz land mobile services by eliminating those provisions that prohibit wireline telephone common carriers from becoming base station licensees for these types of operations.³ In addition, the Commission proposes to eliminate the rules that prohibit cellular and other licensees in the Public Mobile Services from providing dispatch services.⁴

As a wireline telephone common carrier and a cellular operator, Century has extensive familiarity with the marketplaces in which both traditional wirelines and mobile service providers operate. On the basis of its experience in both of these capacities, Century supports the Commission's proposals to remove the existing restrictions that prohibit wirelines and common carrier mobile service providers from participating in the SMR service and from providing dispatch services. The removal of these restrictions will help equalize the regulatory playing field by allowing wirelines and common carrier mobile service operators to offer the same array of services as

²(...continued)

applicable to common carrier and private mobile radio services to implement Sections 3(n) and 332 as amended, and to establish regulatory symmetry among similar mobile services); Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411 (1994) (Second Report and Order) (implementing the definitional issues raised by Congress's amendments to Sections 3(n) and 332 of the Communications Act) [hereinafter *Regulatory Parity Second Report and Order*]

³ *Notice* at ¶ 1. See also 47 C.F.R. §§ 90.603(c) (eligibility in the SMRS), 90.703(c) (eligibility in the commercial 220-222 MHz land mobile service).

⁴ See 47 C.F.R. §§ 22.519(a), 22.911(d).

other commercial mobile radio service ("CMRS") competitors. In addition, the elimination of these restrictions will increase the number of competing operators in the SMR and dispatch markets, thereby expanding the options available to consumers and reducing consumer costs.

II. LEGISLATIVE, REGULATORY, AND MARKETPLACE CHANGES FAVOR ELIMINATION OF THE RESTRICTION ON WIRELINE ELIGIBILITY IN THE SMR SERVICE

In discussing its proposal to eliminate the restriction on wireline eligibility in the SMR service, the Commission sets forth a detailed analysis of the history of the wireline/SMR prohibition, the current state of the SMR industry, and Congress's recent amendments to Section 332 of the Communications Act.⁵ The Commission concludes that, "[g]iven the dynamic changes occurring in the marketplace . . . our wireline restrictions no longer serve a useful purpose and therefore should be eliminated."⁶ The Commission bases this conclusion upon its findings that: (1) any risk of wireline carriers being able to cause competitive harm if allowed to enter the SMR market has diminished to such an extent that wireline participation in mobile services has the potential to increase competition rather than impede it;⁷ (2) the determination that wireline participation in personal communications services ("PCS") will produce

⁵ *Notice* at ¶¶ 3-14.

⁶ *Id.* at ¶ 15.

⁷ *Id.* at ¶ 16.

significant economies of scope between wireline and PCS networks and thereby promote the rapid development of PCS and yield a broader array of PCS services is equally applicable to wireline participation in the SMR and 220 MHz services;⁸ (3) other sufficient regulatory safeguards exist to prevent wirelines from discriminating in offering interconnection to non-affiliated SMR licensees and from using their market power in the local exchange market to cross-subsidize their SMR operations;⁹ (4) the SMR industry is sufficiently well established that any threat that wirelines might obtain a substantial portion of spectrum and thereby hinder the development of SMR service by non-wirelines is largely diminished;¹⁰ (5) repeal of the wireline/SMR ban could promote opportunities for additional entry of small entrepreneurs;¹¹ and (6) wireline entry could infuse new capital and expertise into the mobile services marketplace, promoting the development of new technological advances that will benefit these services.¹²

The Commission solicits commenters' views on these findings, and expressly invites commenters to discuss the potential ability of wirelines to unfairly influence competition in the mobile services marketplace, and to address whether or not wireline

⁸ *Id.* at ¶ 17.

⁹ *Id.* at ¶¶ 18-20.

¹⁰ *Id.* at ¶ 21.

¹¹ *Id.* at ¶ 23.

¹² *Id.* at ¶ 24.

entry could hasten the trend toward the acquisition of SMRs by larger entities.¹³

Finally, the Commission asks commenters to discuss whether existing accounting safeguards applicable to local exchange carriers ("LECs") with CMRS operations are sufficient to protect against cross subsidization and discriminatory pricing, or whether structural separation requirements should be imposed on wirelines seeking to offer SMR and 220 MHz land mobile services.¹⁴

At the outset, Century agrees with the Commission's determinations that the concerns that originally prompted the agency to adopt the wireline/SMR eligibility restriction have dissipated, and that wireline participation in the SMR service is more likely to increase competition than to thwart it. First, with respect to the original bases for the wireline restriction, the Commission stated in the *Notice* that the wireline prohibition was premised on the established dominance of wireline carriers in the mid-1970s, and that the prohibition was viewed as consistent with promoting competition in the nascent SMR industry, with ensuring that the SMR service would be available as a business opportunity for small entrepreneurs, and with the desire to prevent discriminatory interconnection practices by wirelines.¹⁵ In addition, in a prior Order discussing the wireline limitation, the Commission cited two other bases for the wireline restriction: (1) the "historical distinction between private and common carrier

¹³ *Id.* at ¶ 25.

¹⁴ *Id.* at ¶ 27.

¹⁵ *Id.* at ¶ 5.

service," and (2) the interest in labelling SMR providers as private carriers so that they would not be subject to state entry and rate regulation.¹⁶ Significantly, none of these concerns is of continuing validity in today's environment.

Since the adoption of the prohibition on wireline eligibility in the SMR service, the telecommunications marketplace has radically changed. Not only has the structure of the marketplace been altered by the break-up of the American Telephone and Telegraph Company ("AT&T") but, in addition, any dominance once exercised by wirelines has disappeared with the emergence of highly successful competitors in other services, such as non-wireline cellular operators and, most recently, SMR operators themselves. The initiation of PCS operations is likely to increase this trend. In addition, the SMR industry has evolved from originally being envisioned as a "provider of radio dispatch communications to local customers on a non-interconnected basis"¹⁷ to a sophisticated industry capable of providing "innovative, digital applications that allow users nationwide to send both voice and data transmissions" that are interconnected to the public switched telephone network.¹⁸ Furthermore, as noted by the Commission in the *Notice*, the SMR industry is sufficiently well established that

¹⁶ Amendment of Part 90 of the Commission's Rules Governing Eligibility for the Specialized Mobile Radio Services in the 800 MHz Land Mobile Band, 7 FCC Rcd 4398 (1992) (Order).

¹⁷ *Notice* at ¶ 2.

¹⁸ *Id.*

wireline participation is unlikely to chill further development of the service.¹⁹ Spectrum in the SMR service has now been available to small entrepreneurs and non-wireline carriers for over twenty years. Most of the spectrum allocated for SMR operations has been applied for -- in fact, as the Commission noted in the *Notice*, most of it is already licensed.²⁰ As such, there is little possibility of wirelines securing a substantial portion of the SMR spectrum to the detriment of the provision of non-wireline competitors.

Retention of the wireline limitation is also unnecessary as a means for preventing wirelines from engaging in discriminatory interconnection practices. As mentioned in the *Notice*, Section 201 of the Communications Act provides the Commission with explicit jurisdiction to require carriers to establish physical connections with other carriers that request it.²¹ In addition, Section 332(c)(1)(B) of the Communications Act, as amended by the Budget Act,²² requires the Commission to respond to the request of any CMRS provider (which includes most interconnected SMR operators) and, if the request is reasonable, directs the Commission to order a common carrier to establish physical connections with such service provider pursuant to

¹⁹ *Id.* at ¶ 21.

²⁰ *Id.* See also *Fleet Call, Inc.*, 6 FCC Rcd 1533, 1535 (1991) (Memorandum Opinion and Order), *recon. dismissed*, 6 FCC Rcd 6989 (1991).

²¹ 47 U.S.C. § 201. See also *Notice* at ¶ 19.

²² Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(B), 107 Stat. 312, 392 (1993) ("Budget Act"), *to be codified at* 47 U.S.C. §§ 303(n), 332.

Section 201.²³ The Commission has interpreted Section 332(c)(1)(B) to impose on local exchange carriers ("LECs"), i.e., wirelines, the obligation to offer interconnection reasonably requested by any CMRS provider, including cellular providers, PCS providers, and SMR providers classified as CMRS.²⁴ In addition, the Commission stated that LECs bear the burden of demonstrating why a denial of a reasonable request for service from any private mobile radio service ("PMRS") provider, including traditional non-interconnected SMR operators, does not constitute a violation of Sections 201(a), 201(b), and 202 of the Communications Act.²⁵ Thus, the rules and policies applicable to both CMRS and PMRS operations already contain mechanisms to ensure that wirelines cannot unreasonably discriminate in the provision of interconnection services.

Significantly, the Budget Act's amendments to Section 332 of the Communications Act serve to eliminate the final two bases for the wireline limitation. In particular, because the amendments have reclassified interconnected SMR service providers as common carrier CMRS operations, the rationale for preserving a distinction between private and common carrier operations has largely disappeared. In addition, the Budget Act preempts state and local rate and entry regulation of all commercial mobile radio services, effective August 10, 1994, except that states with

²³ Notice at ¶ 19. See also 47 C.F.R. § 332(c)(1)(B).

²⁴ *Regulatory Parity Second Report and Order*, 9 FCC Rcd at 1497-98.

²⁵ *Id.* at 1500-01.

rate regulation as of June 1, 1993, may petition to Commission to extend that authority.²⁶ Thus, SMRs were not subject to state regulation prior to the Budget Act's amendments, nor, pursuant to Congress's clear pronouncements, will they be upon reclassification as CMRS providers. Wireline participation in the SMR service will not weaken this statutory provision.

In light of the above, Century agrees with the Commission's determination that wireline participation in the SMR service will most likely increase the level of competition in the SMR marketplace. In the Report and Order establishing the rules and policies for broadband PCS operations, the Commission recently delineated the benefits that wireline participation can bring to emerging services. In particular, the Commission noted that wireline participation is likely to produce significant economies of scope between wireline and PCS networks, which in turn will promote more rapid development of PCS and yield a broader range of PCS services at lower costs to consumers.²⁷ These benefits are equally applicable to wireline participation in the SMR service. Similarly, Century agrees with the Commission that wirelines have the capital and expertise to assist in the development of new technological advancements

²⁶ Budget Act § 6002(c)(2)(A). *See also* 47 U.S.C. §§ 332(c)(3)(A)-(B).

²⁷ Amendment of the Commission's Rules To Establish New Personal Communications Services, 8 FCC Rcd 7700, 7751 (1993) (Second Report and Order, *recon.*, Amendment of the Commission's Rules To Establish New Personal Communications Services, FCC 94-144 (June 13, 1994) (Memorandum Opinion and Order).

that will benefit the SMR service as it evolves from stand-alone analog systems to wide-area networks.²⁸

Accordingly, the restriction on wireline eligibility for SMR licensing should be removed and wireline carriers should be permitted to seek SMR licenses immediately upon the effective date of the rule amendments.

III. THE COMMON CARRIER DISPATCH PROHIBITION SHOULD ALSO BE ELIMINATED

As mentioned, the Commission also proposes to eliminate the prohibition on common carrier provision of dispatch service. Specifically, the Commission states that it agrees with a number of parties who have indicated their belief that repeal of the dispatch ban will "enhance competition in the dispatch market and thereby provide consumers with expanded choice[s] and lower prices."²⁹

Century agrees with this assessment. The dispatch prohibition was designed to ensure that frequencies allocated for use by common carriers would be reserved for common carrier transmissions, and would not become devoted to dispatch service to any significant degree.³⁰ This concern is no longer valid. Spectrum-efficient provision of common carrier services has increased to such an extent that the provision of dispatch services by common carrier mobile service providers can no longer be

²⁸ Notice at ¶ 24.

²⁹ *Id.* at ¶ 30.

³⁰ *Id.* at ¶ 12.

perceived as a threat to the amount of spectrum available for traditional common carrier offerings. Congress has essentially recognized that the dispatch prohibition is no longer necessary by inviting the Commission to eliminate it.³¹

Moreover, the elimination of the common carrier dispatch prohibition is consistent with the goals of Congress and Commission to increase the level of competition in the mobile services marketplace and to create a comparable regulatory environment for competing service providers. In particular, elimination of the dispatch prohibition will equalize the regulatory requirements applicable to all mobile service providers by allowing competing operators to offer the same portfolio of service options and service packages. In addition, elimination of the dispatch prohibition will increase the number of competing operators offering dispatch services, to the ultimate benefit of consumers.

IV. CONCLUSION


In summary, for the reasons stated herein, Century urges the Commission to adopt its proposals to allow wirelines to become eligible for licensing in the SMR service, and to eliminate the prohibition on the provision of dispatch service by cellular licensees and other licensees in the Public Mobile Services. The elimination of these

³¹ Section 332(c)(2) of the Communications Act, as amended by the Budget Act, gives the Commission the discretion to eliminate the dispatch prohibition in whole or in part. *See* 47 U.S.C. § 332(c)(2). *See also Regulatory Parity Second Report and Order*, 9 FCC Rcd at 1455; *Notice* at ¶ 14.

restrictions will serve the public interest by increasing the level of competition in the affected services, and by equalizing the regulatory requirements applicable to competitors in the mobile services marketplace.

Respectfully Submitted,

CENTURY TELEPHONE ENTERPRISES,
INC.

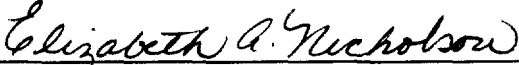
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Dated: October 5, 1994

CERTIFICATE OF SERVICE

I, Elizabeth A. Nicholson, hereby certify that a courtesy copy of the foregoing
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